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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/453,934	05/17/2000	Tetsuro Motoyama	5244-0121-2	7299
22850	7590	03/19/2007		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER CHANG, JULIAN	
			ART UNIT	PAPER NUMBER
			2152	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		03/19/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary

Application No.

09/453,934

Applicant(s)

MOTOYAMA ET AL.

Examiner

Julian Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is responsive to communication filed on 01/16/2007. Claims 1-20 are pending, and have been examined.

Double Patenting

2. Claims 1, 5-8 and 11-20 of this application conflict with claims 20, 24-27 and 30-39 of **Application No. 11/389,262**. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 5-8 and 11-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20, 24-27 and 30-39 of **copending Application No. 11/389,262**. Although the conflicting claims are not identical, they are not patentably distinct from each other because the distinctions in the instant application would have been obvious over the copending application. Since in the copending application, the applicant claims the selection of communications protocols for transmission between at least one of a device, an application and an application unit, it would have been obvious that the protocols used would be application-layer protocols.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-7 and 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3, 6-11 and 13-20 of **U.S. Patent No. 7,120,674**. Although the conflicting claims are not identical, they are not patentably distinct from each other because the distinctions in the instant application would have been obvious over the granted patent. Since in the granted patent, the applicant claimed the selection of communications protocols for transmission between at least one of a device, an application and an application unit, it would have been obvious that the protocols used would be application-layer protocols.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbieri, et al (US 6,212,160), hereinafter "Barbieri", and further in view of Motoyama (US 5,818,603) and Yeomans (US 6,134,680).

7. Regarding claims 1 and 18, Barbieri teaches a method and a product implementing said method, said method comprising:

providing a plurality of communications protocols capable of transferring data ('a plurality of protocols', abstract);

selecting a first protocol of the plurality of communications protocols to transfer data to a remote receiver from at least one of a device, and appliance, an application, and an application unit ('application first attempts to establish a communications channel by using the preferred protocol', abstract);

selecting a second protocol of the plurality of communications protocols to transfer data to the remote receiver from the at least one of a device, and appliance, an application, and an application unit ('If that fails, the application attempts to establish the communications channel by using another supported protocol', abstract);

performing a first attempt to transfer data to the remote receiver from the at least one of a device, and appliance, an application, and an application unit using the first selected protocol ('application first attempts to establish a communications channel by using the preferred protocol', abstract); and

performing a second attempt to transfer data to the remote receiver from the at least one of a device, and appliance, an application, and an application unit using the second selected protocol after the first attempt, automatically without human intervention ('If that fails, the application attempts to establish the communications channel by using another supported protocol', abstract).

Barbieri fails to explicitly disclose selecting application-layer protocols.

However, Yeomans discloses the selection of application layer protocols from a plurality of application-layer protocols (col. 6, lines 44-62).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to employ application-layer protocols as taught by Yeomans in the system of Barbieri with motivation to provide communications via alternate protocols, thereby increasing compatibility.

Barbieri fails to teach the collection and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit.

However, Motoyama teaches the collection of events and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit (Col. 5, lines 45-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to collect events and transfer collected events as taught by Motoyama using multiple protocols as taught by Barbieri with motivation to increase compatibility and redundancy in performing diagnostic tasks.

8. Regarding claims 8 and 19, Barbieri teaches a method and a product implementing said method, said method comprising:

providing a plurality of communications formats capable of transferring data ('a plurality of protocols', abstract);

selecting a first format of the plurality of communications formats to transfer data to a remote receiver from at least one of a device, and appliance, an application, and an application unit ('application first attempts to establish a communications channel by using the preferred protocol', abstract);

selecting a second format of the plurality of communications format to transfer data to the remote receiver from the at least one of a device, and appliance, an application, and an application unit ('If that fails, the application attempts to establish the communications channel by using another supported protocol', abstract);

performing a first attempt to transfer data to the remote receiver from the at least one of a device, and appliance, an application, and an application unit using the first selected format ('application first attempts to establish a communications channel by using the preferred protocol', abstract); and

performing a second attempt to transfer data to the remote receiver from the at least one of a device, and appliance, an application, and an application unit using the second selected format after the first attempt, automatically without human intervention ('If that fails, the application attempts to establish the communications channel by using another supported protocol', abstract).

Barbieri fails to explicitly disclose selecting application-layer protocols.

However, Yeomans discloses the selection of application layer protocols from a plurality of application-layer protocols (col. 6, lines 44-62).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to employ application-layer protocols as taught by Yeomans in the system of Barbieri with motivation to provide communications via alternate protocols, thereby increasing compatibility.

Barbieri fails to teach the collection and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit.

However, Motoyama teaches the collection of events and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit (Col. 4, lines 45-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to collect events and transfer collected events as taught by Motoyama using multiple protocols as taught by Barbieri with motivation to increase compatibility and redundancy in performing diagnostic tasks.

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9. Regarding claims 2-3 and 9-10, Barbieri-Motoyama-Yeomans teaches the invention substantially as claimed and described in claims 1 and 8 above, including a library of code shared between first and second applications and a dynamically linked library of code shared between first and second applications (Motoyama: database 28, Fig. 1).

10. Regarding claim 4, Barbieri-Motoyama-Yeomans teaches the invention substantially as claimed and described in claim 1 above, including a plurality of communication protocols comprise at least one of (1) a store and forward protocol and (2) a direct connection protocol (Motoyama: Col. 7, lines 4-6).

11. Regarding claim 5, Barbieri-Motoyama-Yeomans teaches the invention substantially as claimed and described in claim 1 above, including a plurality of communication protocols comprise (1) a simple mail transfer protocol and (2) at least one of (a) a file transfer protocol and (b) a hypertext transfer protocol (Motoyama: Col. 7, lines 4-6).

12. Regarding claims 6-7, and 13-14, Barbieri-Motoyama-Yeomans teaches the invention substantially as claimed and described in claims 1 and 8 above, including the use of a second protocol when a first protocol fails (Barbieri: Abstract).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the disclosure of Barbieri to provide redundancy through a plurality of protocols.

13. Regarding claims 11 and 12, Barbieri-Motoyama-Yeomans teaches the invention substantially as claimed and described in claim 8 above, including a plurality of communication formats (Motoyama: col. 1, lines 52-57; and col. 8, lines 39-45) which obviously may comprise binary, text, hypertext markup language, and extended markup language, or compressed format.

14. Regarding claims 15-17, Barbieri-Motoyama-Yeomans teaches the invention substantially as claimed and described in claim 8 above. In addition, it is obvious that different protocols may work with more than one format.

15. Regarding claim 20, Barbieri-Motoyama-Yeomans teaches the invention substantially as claimed and described in claims 19 above, including performing a first attempt to transfer collected events comprises performing an attempt using a first application-layer protocol (Barbieri: 'application first attempts to establish a communications channel by using the preferred protocol', abstract).

Response to Arguments

16. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. US 5,819,110 – Motoyama.
- b. US 5,987,517 – Firth, et al.

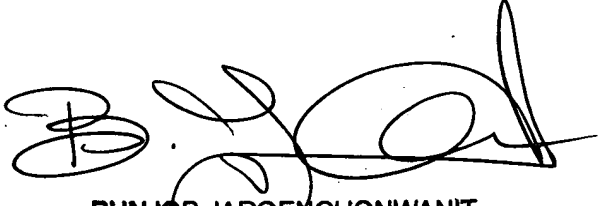
18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Chang whose telephone number is (571) 272-8631. The examiner can normally be reached on Monday thru Friday 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC



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